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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,
Plaintiff and Respondent,
v.
THOMAS LEE WALKER, JR.,
Defendant and Appellant.

A094495

(Solano County
Super. Ct. No. VC147637)

By an amended information consolidating allegations from three separate cases,¹ the Solano County District Attorney charged appellant Thomas Lee Walker, Jr. with sale of marijuana (count I); sale of cocaine base (count II); and possession for sale of cocaine base (count III). The information also alleged as to (1) counts I and II that appellant was released from custody on bail at the time of committing the offenses (Pen. Code, § 12022.1); and (2) counts II and III that appellant had suffered two prior convictions pursuant to Health and Safety Code sections 11370.2, subdivision (a) and 11370, subdivisions (a) and (c).

A jury found appellant guilty on all counts; appellant admitted the enhancement allegations. The trial court sentenced appellant to a total prison term of 16 years 4 months. On appeal appellant challenges the trial court's denial of his

¹ Appellant objected to consolidation.

motion to suppress evidence obtained from a warrantless search of his grandmother's backyard. He also asserts prejudicial prosecutorial misconduct. We affirm.

I. FACTS

All the offenses occurred in the area in front of 201 Mark Street in Vallejo. This area and the immediately surrounding streets are associated with a high level of drug sales. The north substation of the Vallejo Police Department is located 75 yards from 201 Mark Street.

A. Count I: Sale of Marijuana

On May 2, 2000, appellant sold a baggie containing .49 grams of marijuana to Reka Turner. The sale took place on the street in front of 201 Mark Street.

B. Count II: Sale of Cocaine Base

On May 29, 2000, Officer Michael Wheat of the Vallejo Police Department was observing the 100 and 200 blocks of Mark Street with the aid of his binoculars. A driver in a white Mustang pulled up in front of appellant. The driver looked at appellant, made some hand gestures, then parked three houses down the block. The driver exited his car and approached appellant. Appellant spoke briefly with two individuals, then turned and faced the driver. The driver handed appellant what appeared to be folded money. Appellant took the folded piece of paper, reached into his mouth, abstracted a small object and handed it to the driver.

Testifying as an expert in hand-to-hand drug transactions, Officer Wheat stated that it was common for drug dealers to hide rock cocaine in their mouths. With the belief that the driver purchased a rock of cocaine from appellant, Officer Wheat and his partner made a quick vehicle stop within three or four blocks. Officer Wheat informed the driver of the Mustang that he had observed the drug transaction. The driver put his head down and pointed in between the seats, where Wheat found a piece of rock cocaine.

Arrested the next day, appellant had \$376 in cash and a pager. He denied selling cocaine and instead said he was involved in selling "weed." Appellant identified his address as 201 Mark Street.

C. Count III: Possession for Sale of Cocaine Base

In response to repeated reports of drug activity, on March 6, 1999, Officer Drew Ramsay and two other officers drove up and parked in front of 201 Mark Street. Two of three men standing in the driveway ran off. Officer Ramsay chased a suspect running along the side of the house. The suspect yelled out “Rollers” as he ran. “Rollers” is “street slang” for police.

During the chase Officer Ramsay noticed appellant crouching near the crawl space of the house, making shaking movements as if he were dumping things onto the ground. Officer Ramsay told Officer Horton, who was following him, to “watch” appellant. No one else was in the yard.

Returning to the crawl space area, Officer Ramsay found a slightly torn baggie and 17 pieces of rock cocaine scattered about. He testified that appellant did not appear to be under the influence of any drugs and did not possess any narcotics paraphernalia. The seized rocks contained 4.28 grams of cocaine base.

Officer Les Bottomley testified as an expert in possession of cocaine base for sale and street level hand-to-hand sales of narcotics. He believed appellant possessed the rock cocaine for sale rather than personal use. This belief was based on the “sheer number” of rocks that appellant possessed, in a neighborhood with “probably the highest” incidence of drug sales in the city, coupled with the fact that appellant had no paraphernalia and did not appear to be under the influence of narcotics.

II. DISCUSSION

A. No Error in Denying Motion to Suppress (Count III)

1. Suppression Hearing

Appellant moved to suppress evidence seized by Officer Ramsay from the residence at 201 Mark Street on grounds that the police did not have a search warrant or “factual basis that anyone was engaged in criminal activity” there.

At the suppression hearing Officer Ramsay testified that he and two other officers on patrol that day decided to drive to 201 Mark Street because of “repeated and continuous complaints from citizens regarding the sales of narcotics” at that

particular location. The department had received calls on nearly a daily basis concerning drug trafficking there. Officer Ramsay knew that appellant's grandmother lived at 201 Mark Street and appellant sometimes stayed there. He had stopped appellant approximately 10 times in the vicinity of the house for pedestrian violations and suspected drug trafficking.

Officer Ramsay did not seek a search warrant that day because "[t]he information we received wasn't enough to establish for a search warrant." Instead, the plan was for two officers to approach the site in squad cars coming westbound on Mark Street, with Ramsay driving eastbound.

Officer Ramsay pulled up in front of the house and got out of his vehicle. Several men standing in the driveway immediately took off running. Ramsay testified that it was common for individuals to run from the police when they possess drugs and the citizen callers had specified that "people often run as soon as the police come around the corner."

In this instance one of the men ran through an open gate leading into the backyard, yelling "[R]ollers." As Ramsay gave chase he spotted appellant bent over in front of the crawl space. He appeared to be emptying a baggie or a drink onto the ground. Ramsay started to jump the rear fence to continue chasing the original suspect, but instead broke off pursuit and walked back toward appellant because he wanted to see what he had dropped. Ramsay had received reports from another narcotics officer that drug dealers often keep their drugs in the crawl space underneath the house. He found 17 pieces of rock cocaine and a torn sandwich bag in the vicinity of the crawl space.

The trial court concluded that the conduct of the police officers was reasonable under the circumstances and denied the suppression motion.

2. Analysis

When officers lack a warrant, the People bear the burden of establishing that no search occurred, or that the search undertaken was justified by some exception to the warrant requirement. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.) "The

‘ultimate standard set forth in the Fourth Amendment is reasonableness’ [citation]” (*Ibid.*)

Appellant assumes for purposes of his arguments that Officer Ramsay had a right to chase the third party through his grandmother’s backyard. However, he contends there was no justification, after breaking off that pursuit, to search the crawl space area without a warrant. The evidence seized from that area was not visible from the route of pursuit or Officer Ramsay’s vantage point by the fence.

People v. Thompson (1990) 221 Cal.App.3d 923 is instructive. There, the police, acting on a tip that drug activity was ongoing at a specific address, drove to the address and spotted an individual in the backyard whom they knew did not live there. When the person immediately stepped back, the officers got out of the police car and hopped over a fence into the backyard to approach him. Once in the yard, one of the officers saw two people in a chicken coop. Thinking burglars were in the coop the officer walked over to it. There, he spotted the defendant and a woman peering into a bag. The officer could see a glass pipe in the bag. Investigating further, more paraphernalia and drugs were found. (*Id.* at pp. 929-930.)

The reviewing court concluded that the officer’s conduct leading to seizure of the drugs did not violate the defendant’s Fourth Amendment rights. “Officer Kiser had a right to be where he was when he saw two people with a flashlight in the chicken coop, whom he thought to be burglars. Such observations were not a ‘search’ in the constitutional sense. [Citation.] For the same reasons which [made] the initial entry onto the property constitutionally proper, Kiser’s actions in going over to the chicken coop to investigate further were also proper. Thus, the officer had a right to be where he was when he observed the drug paraphernalia, providing grounds to detain appellant, which detention soon ripened into an arrest. A proper search incident to that arrest resulted in the discovery of the drugs sought to be suppressed.” (*People v. Thompson, supra*, 221 Cal.App.3d at p. 946.)

Here, too, Officer Ramsay’s actions in returning to the crawl space vicinity to investigate further was proper under the Fourth Amendment. Numerous citizen

complaints had been lodged concerning the particular residence at 201 Mark Street, located in an area known for a high incidence of narcotics activity. Officer Ramsay was legitimately in the backyard, engaged in legitimate police business of chasing a suspect. Entry onto the premises was not for the purpose of spying on the property or into the residence, let alone the crawl space, or on some pretext that involved appellant. Appellant just happened to be there, bent over, dumping something near the crawl space area; he was not one of the men seen in the driveway when the officers arrived. Officer Ramsay's initial observations of appellant did not amount to a constitutional search. Moreover, another narcotics officer had reported that dealers sometimes stashed their drugs in crawl spaces. Thus, Officer Ramsay's conduct in further investigating the area where he had observed appellant's movements was also reasonable under these circumstances. Once there, he spotted the drugs scattered about the crawl space. As the trial court explained, a "reasonable inference" could be drawn that appellant "voluntarily abandoned some dope as the officer ran by and the officer briefly dealt with the guy who fled." Thus, Officer Ramsay's further investigation was justified by the exigency that appellant or his associates might destroy contraband. (See *People v. Ortiz* (1995) 32 Cal.App.4th 286, 291, 293.)

B. No Prejudicial Prosecutorial Misconduct (Count II)

1. Factual Background

Cross-examining Officer Wheat concerning Mr. Brown, the driver of the Mustang that was stopped and searched following the sale of cocaine base at 201 Mark Street, defense counsel asked if he knew "where Mr. Brown was coming from before he arrived there on Mark Street?" The following exchange took place: "A. He told me, and I don't recall. [¶] Q. Okay. [¶] A. Mr. Brown had made a statement to me he was coming into the Crest to buy some cocaine, that he lived in Martinez, he went up Park Street specifically due to the fact that he had bought cocaine from the defendant in the past, that is where he was going to buy it."

Defense counsel objected to the statement and asked that it be stricken; it was. The trial court also instructed the jury not to consider for any purpose any offer of evidence that had been ordered stricken.

Now appellant maintains that the prosecutor was guilty of prejudicial misconduct in allowing his witness to “inject” the damaging testimony into the case, in violation of his constitutional rights.

Going directly to the issue of prejudice, any error was harmless, even if we were to apply the *Chapman v. California* (1967) 386 U.S. 18 standard. The evidence of appellant’s guilt on this count was overwhelming. Officer Wheat observed the transaction, specifically Mr. Brown handed appellant folded money in exchange for something appellant pulled out of his mouth. It is common for drug dealers to hide pieces of rock cocaine in their mouths. Officer Wheat witnessed a common narcotics transaction in a neighborhood known for heavy trafficking. He stopped Brown within minutes; Brown was in possession of rock cocaine. Officer Wheat’s comment could not have made any difference.

III. DISPOSITION

The judgment is affirmed in its entirety.

Reardon, J.

We concur:

Kay, P.J.

Rivera, J.